BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CLIFORD L. CRONE	)	
Claimant	)	
VS.	)	
	)	Docket No. 239,263
GREAT BEND COOPERATIVE ASSOC.	)	
Respondent	)	
AND	)	
	)	
FARMLAND MUTUAL INS. CO.	)	
Insurance Carrier	)	

ORDER

Respondent appeals the preliminary hearing Order of Administrative Law Judge Bryce D. Benedict dated August 11, 2000. In the Order, claimant was awarded temporary total disability compensation and ongoing medical treatment for both his knee and his back. However, claimant's request for a change of treating physician was denied, with John R. Schurman, II, M.D., remaining as the authorized treating physician.

ISSUES

(1) Is claimant entitled to temporary total disability compensation and, if so, for what weeks and at what amount?

(2) Is claimant entitled to ongoing authorized medical treatment for both his knee and his low back?

(3) Is claimant's back condition the natural and probable consequence of claimant's original injury to his left knee or it is a new and separate injury for which claimant is not entitled to receive benefits?

(4) Is claimant entitled to a change of treating physician?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for preliminary hearing purposes, the Appeals Board finds the Order of the Administrative Law Judge should be affirmed.

With regard to the issues dealing with claimant's entitlement to temporary total disability compensation, medical treatment and a change of treating physician, the Appeals Board finds, under K.S.A. 44-534a and K.S.A. 1997 Supp. 44-551, that the Board does not have jurisdiction to consider those issues. The Board's jurisdiction is limited on appeals from preliminary hearings to specific issues which have been deemed jurisdictional, including:

(1) Did the worker sustain an accidental injury?

(2) Did the injury arise out of and in the course of employment?

(3) Did the worker provide both timely notice and timely written claim of the accidental injury?

(4) Whether certain defenses apply.

The above issues in this matter do not involve any of these jurisdictional issues and are, therefore, not properly before the Board at this time.

The issue dealing with the compensability of claimant's back injury, however, is jurisdictional under K.S.A. 1997 Supp. 44-551 and K.S.A. 44-534a, as it questions whether claimant's injury arose out of and in the course of his employment or is the result of a new and separate accident.

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to the benefits claimed by a preponderance of the credible evidence. *See* K.S.A. 1997 Supp. 44-501 and K.S.A. 1997 Supp. 44-508(g).

When a primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from that injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury. Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972).

However, where the worsening or a new injury would have occurred absent the primary injury or where it is shown to have been produced by an independent intervening

cause, it is not compensable. Nance v. Harvey County, 263 Kan. 542, 952 P.2d 411 (1997).

Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

In this instance, the testimony of the claimant regarding how the accident occurred is uncontradicted. Additionally, in his May 1, 2000, medical report, Philip R. Mills, M.D., ties the claimant's back pain into claimant's original knee injury and the altered gait, which that knee injury engendered. The Appeals Board finds Dr. Mills' opinion to be persuasive. When coupled with claimant's testimony, the Appeals Board finds it sufficient to establish a direct connection between claimant's knee injury and his back symptoms. The Board finds the claimant's back problems are a direct and natural result of the primary knee injury.

Respondent contends claimant should not be allowed to argue this appeal as it was originally decided by Judge Bruce E. Moore prior to his recusal, with an appeal from that decision currently pending before the Appeals Board. The Appeals Board notes that there is no limit to the number of preliminary hearings that can be held by an administrative law judge under K.S.A. 44-534a. Merely because an appeal to the Board is pending on an issue does not divest the administrative law judge of jurisdiction to conduct a new preliminary hearing, even on the same issue. Hanna v. M. Bruenger & Co., Inc., and Leona Bruenger & Co., Inc., WCAB Docket No. 222,182 (December 1997). However, unlimited preliminary hearings, revisiting the same issue based upon the same evidence, would not be appropriate. Anthony v. Sears Roebuck & Company, WCAB Docket No. 183,324 (November 1996); Perrill v. Wesley Medical Center, WCAB Docket No. 233,702 (February 1999).

In this instance, claimant provided additional evidence regarding whether his back complaints stem from the original knee injury. The Appeals Board finds that, as an administrative law judge is not limited under normal circumstances to a specific number of preliminary hearings and as additional evidence was presented, the revisiting of this issue was proper under these circumstances. This is a matter within the sound discretion of the Judge. The Appeals Board, therefore, finds that the Order of the Administrative Law Judge dated August 11, 2000, should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated August 11, 2000, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 2001.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Jeffrey E. King, Salina, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director